

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO. 271 OF 2024
IN**

SECOND APPEAL (LODG.) NO. 21842 OF 2023

Wadhwa Group Holding Private Ltd.

...Applicant

V/s.

Vijay Choksi & anr.

...Respondents

Mr. Naushad Engineer with *Mr. Chirag Kamdar, Mr. Abir Patel and Ms. Lavina Bhargava i/by. M/s. Wadia Ghandy & Co., for the Appellant.*

Mr. Ashish Kamat, Senior Advocate with *Mr. Vikram Garewal, Mr. Sagar Deb, Mr. Amani i/by. Mr. Anmol Bartaria, for Respondent No. 1.*

CORAM : SANDEEP V. MARNE, J.

DATED : 16 February 2024.

P.C. :

1. This application is filed seeking condonation of delay of 85 days in challenging the order dated 18 October 2022 of MahaRERA Appellate Tribunal and 4 days in challenging the order of MahaRERA Appellate Tribunal passed on 9 February 2023. There is some dispute amongst the parties about the exact number of days of delay in filing the Appeal. The dispute arises on account of two factors. Firstly, the Respondents dispute that the limitation can be computed from the date of acquisition of knowledge of the impugned orders passed by the Appellant. Secondly, the Respondent No.1 has sought to suggest that the Appeal has infact been lodged in this Court on 10 August 2023 and not

on 18 April 2023 and therefore the delay will have to be computed upto 10 August 2023. On the other hand, it is the contention of the Applicant that knowledge about passing of Order dated 18 October 2022 was acquired by it on 24 November 2022 and therefore the delay in challenging that order is only of 85 days. On the other hand, if the delay is counted from the date of passing of order dated 18 October 2022, the delay would be 122 days. Similarly, in respect of challenge to the Order 9 February 2023, the date of acquisition of knowledge by the Applicant is stated as 13 February 2023 resulting in delay of only 4 days in filing the Appeal. However, if the limitation is computed from the date of passing of Order dated 9 February 2023, the delay would be 8 days.

2. Mr. Engineer, the learned counsel appearing for the Applicant would place reliance on sub-section (4) of Section 44 of the Real Estate (Regulation and Development) Act, 2016 (**RERA**) under which, according to Mr. Engineer, orders passed by the Tribunal are required to be communicated to the parties. He would therefore submit that since no communication of the orders to the Applicant was done by the Registry of the Appellate Tribunal, the limitation must be computed from the date of acquisition of knowledge about passing of the orders.

3. So far as the controversy with regard to the exact date of filing of the Appeal is concerned, Mr. Kamat, the learned senior Advocate appearing for the Respondent No.1 has placed reliance on the acknowledgment issued by the Registry of this Court about lodging of the Appeal. According to Mr. Kamat, the e-filing date on the printout is indicated as '10 August 2023' and therefore the date of filing must be

treated as 10 August 2023. Reliance in this regard is placed on Rule 14 of the E-filing Rules of the High Court of Bombay, 2022. Mr. Engineer, on the other hand, would submit that the Appeal was infact lodged on 18 April 2023. However after clearance of objections with regard to the E-filing portal, the final e-filing date is reflected as 10 August 2023. He would invite my attention to the specific admission on the part of the Respondent No.1 in his Affidavit-in reply about the date of filing of Appeal as 18 April 2023. Since the Respondent No.1 has admitted in his affidavit-in-reply that the Appeal has indeed been filed on 18 April 2023, I do not wish to delve deeper into the controversy about the exact date of e-filing of the Appeal. I am therefore of the view that the Appeal will have to be treated as having been lodged on the e-filing portal of this Court on 18 April 2023.

4. If the delay is computed from the date of acquisition of knowledge by the Applicant, the same is 85 days, whereas, if the same is computed from the date of passing of Order dated 18 April 2023, the same is 122 days. It appears that though the Applicant filed written submissions before the Appellate Tribunal, his advocate did not remain present when the Appeal was actually heard. This could possibly be the reason why the Applicant did not know about passing of the Order by the Appellate Tribunal. In that view of the matter as also considering the explanation pleaded in the application, I am of the view that the delay deserves to be condoned, as the same is not inordinate.

5. Accordingly, the Interim Application is allowed. The delay in filing the appeal is condoned. Interim Application is disposed of.

SANDEEP V. MARNE, J.